

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

THOMAS C. DESSELLE, *

Plaintiff, *

vs. *

CASE NO. 4:04-CV-73 (CDL)

THE PRUDENTIAL INSURANCE COMPANY *
OF AMERICA, as Administrator and *
Insurer of the Long Term *
Disability Plan of Knight-Ridder, *
Inc., KNIGHT-RIDDER, INC., and *
COLUMBUS LEDGER-ENQUIRER, INC., *

Defendants. *

O R D E R

The above captioned case arises from Defendant's denial of disability benefits to Plaintiff pursuant to a plan under the Employee Retirement Income Security Act (ERISA). 29 U.S.C. § 1001 et. seq. Defendant has moved for summary judgment.¹ The Court has reviewed the record and finds that genuine issues of material fact exist to be tried as to whether Defendant's denial of benefits was arbitrary and capricious.² Therefore, Defendant's motion is denied.

Fed. R. Civ. P. 56.

¹The Court notes that Defendants Knight-Ridder, Inc. and Columbus Ledger-Enquirer, Inc. have been voluntarily dismissed as parties and that the only remaining Defendant is The Prudential Insurance Company of America, as Administrator and Insurer of the Long Term Disability Plan of Knight Ridder, Inc. See Discovery/Scheduling Order dated October 12, 2004. (Doc. 12)

²The Court is not finding at this stage that Defendant had the requisite discretion for the arbitrary and capricious standard to apply. The Court simply finds that assuming for purposes of Defendant's motion that this standard, which is the one most favorable to Defendant, applies, summary judgment is not appropriate because of the existence of genuine issues of material fact.

IT IS SO ORDERED, this 23rd day of September, 2005.

S/Clay D. Land

CLAY D. LAND
UNITED STATES DISTRICT JUDGE